IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5134 OF 2004

Karim Ahmed Miya Patel ... Applicant

versus

Union of India and anr. ... Respondents

...

Mr.Ayaz Khan, for the Applicant.

Mr.J.C. Satpute, for the Respondent No.1.

Mr.A.S. Gadkari, A.P.P., for the Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

23rd February 2005

P.C.:

. Consequent to order dated February 18, 2005, affidavit of Mr. M.I. Shaikh, Superintendent of Customs, Narcotics Cell, sworn on 21st February 2005, is placed on record. Suffice it to observe that the affidavit concedes the position that Mr. Joseph did not bring it to the notice of his superior that he was required

to go before the High Court in a matter, which was part-heard and was adjourned at his instance on 17th February 2005. The explanation offered by Mr. Joseph as has been observed in my order dated February 18, 2005, to say the least, is casual approach towards Court proceedings, which cannot be countenanced. However, as Mr. Joseph as well as Mr. Shaikh, his superior, who has appeared in person in Court, have tendered unconditional apology for the absence of Mr. Joseph on 17th February 2005, while expressing displeasure about the entire episode, the matter will now proceed on merits.

(A.M.KHANWILKAR,J.)

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P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant is prosecuted not only for possessing 30 kgs. of poppy straw seized from his custody and possession, but also for having abetted in the commission of crime by the prime accused, Girish Mehta, who has been dealing in poppy straw of commecial quantity. In other words, the Applicant has been arrested and is

being tried not only for possessing contraband item, but for abetting the prime accused by applying section 29 of the Act.

. To support the prosecution case that the Applicant was abetting the prime accused, not only statement of the Applicant recorded under section 67 of the Act is being pressed into service, but in addition, similar statement recorded of witness Leena Jagtap, as well as brother of the prime accused Nayan Raghunath Mehta and of the prime accused himself are relied on behalf of the prosecution.

. On perusing the evidence as collected, it does appear that the Applicant was transacting with the prime accused Girish Mehta since December 2003. He in his statement under section 67 has accepted this fact and also stated that he has purchased poppy straw from the prime accused in the lots of 15 kgs. and 10 kgs. in the past besides the seized contraband of 30 kgs. The argument of the Applicant that the recovery of contraband item from the Applicant is less than commercial quantity being 30 kgs. only, for

which reason recourse to section 37 of the Act will not be available clearly overlooks the fact that the prosecution has charged the Applicant for offence under section 29 of the Act for having abetted the prime accused. The evidence does indicate that the Applicant has provided ration cards and addresses of certain persons which entries have been effected in the register maintained by the prime accused. In the statement under section 67 of the prime accused, it is mentioned that even the Applicant has signed the relevant registers. The fact that only 30 Kgs. of contraband item has been recovered from the Applicant will make no difference in applying section 37 of the Act to the Applicant, because the Applicant is charged with the offence of abetting by invoking section 29 of the Act and as there is material to indicate that the prime accused has dealt in the contraband item of commercial quantity, rigours of section 37 will apply even in the case of the Applicant. Besides, it is seen that recovery of 30 kgs. of poppy straw powder has been made from the possession of the Applicant.

. Viewed in this perspective and as there is evidence to indicate the complicity of the Applicant in the commission of crime, it is not possible for this Court to take the view that there are reasons to believe that the Applicant is not guilty of the alleged offence. If it is so, no fault can be found with the conclusion reached by the Court below in rejecting the bail application preferred by the present Applicant.

. The argument of the Applicant that his statement under section 67 of the Act has been later on retracted, which however is after 10 months, the efficacy of that is a matter for trial.

. Accordingly, this application is dismissed.

. Needless to observe that observations made in this order, or, for that matter, in the order passed by the lower Court in rejecting bail application of this Applicant will not influence the trial Court in deciding the matter, which indeed will have to be decided on the basis of

evidence adduced before it on its own merits in accordance with law.

(A.M.KHANWILKAR,J.)